

DECISION



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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-213181

DATE: March 27, 1984

MATTER OF: Synergetics International, Inc.

DIGEST:

1. An agency may award a combined contract for federal supply schedule (FSS) and non-FSS items to the offeror which submitted the low aggregate quote in an oral request for quotations.
2. Where conflicting statements of the protester and the contracting agency are the only evidence of whether the protester was asked for its FSS price or its best price, the protester has not met its burden of evidence.
3. Whether a federal supply schedule (FSS) contractor properly notified GSA of a reduction in its FSS price is a matter of administration of the contract with GSA which does not affect the validity of an award at the reduced price by a purchasing agency.

Synergetics International, Inc. (Synergetics), protests the award to The Sutron Corporation (Sutron) of contract No. DACW54-83-F-3914 by the Department of the Army (Army) for 10 hydrological data collection platforms, antennas, cables and three hand-held terminals under requisition No. SAWEN-HA-83-165 issued by the Army Corps of Engineers.

We deny the protest.

The equipment is listed on the nonmandatory Federal Supply Schedule (FSS) contracts of Sutron and Synergetics. The Army contacted both companies requesting their best possible prices. Sutron offered FSS prices on the platform, the antenna and the antenna cable, but open-market prices on the ADR cable and the programmer terminal, which were not on its FSS. The total price offered by Sutron was less than the price of Synergetics. The contract was awarded to Sutron and, upon notice of the award, Synergetics filed a timely protest with our Office.

Synergetics contends, first, that allowing an "open market" price offer from one vendor without proper advertising and/or notification to the other vendors, in essence,

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constituted a change of the specifications without informing all of the potential vendors. Synergetics alleges that, in fact, only the vendor awarded the contract was notified of the specification change. Synergetics also contends that the ADR cable was misrepresented as an FSS item when it was actually an open-market item, which should have been treated in a competitive manner, with proper notification of procurement specification changes to all potential vendors.

Contrary to the allegation of Synergetics, there was no requirement in the solicitation that the items be listed on the FSS. The requisition, which was read over the phone to each of the manufacturers, merely provided for certain commodities with specified characteristics. Consequently, purchase of a portion of the items on the open market in a single procurement did not constitute a change of the specifications. Although Synergetics listed on the FSS all of the items solicited, Sutron listed the major portion of the items on the FSS and offered the best aggregate price. Under similar circumstances, we held that it is not improper for an agency to procure FSS items and non-FSS in a single procurement and award a contract to the offeror offering the low aggregate price. Synergetics International, Inc., B-213018, February 23, 1984, 84-1 CPD 232.

Although Synergetics was erroneously informed that the Sutron ADR cable was an FSS item, the record indicates that Synergetics was not prejudiced by the misinformation. The Army alleges, and Synergetics has not denied, that only after award of the contract did the Army erroneously inform Synergetics that the ADR cable was an FSS item, based on an erroneous statement by Sutron. This statement was subsequently corrected by Sutron and by the Army. However, since no representation was made to Synergetics before award to Sutron, the erroneous information could have had no prejudicial effect on the offer of Synergetics.

Synergetics next alleges that it was asked only for its FSS prices and that it was placed at a competitive disadvantage by acceptance of open-market prices from Sutron. The Army reports that Synergetics was asked for its best price. Synergetics has not furnished evidence to the contrary and, therefore, has failed to sustain the burden of showing that it was limited to the quotation of its FSS prices. See Willis Baldwin Music Center, B-211707, August 23, 1983, 83-2 CPD 240. In addition, while Synergetics listed all of the

solicited items on the FSS, it could have reduced its FSS prices. See Synergetics International, Inc., supra.

Finally, Synergetics alleges that Sutron deviated from its contracted General Services Administration (GSA) FSS contract pricing by quoting a lower price and there has been no modification or amendment of Sutron's FSS contract price schedule as of a month after the award.

Sutron states that when it lowered its FSS price, because of a misunderstanding of the GSA contract requirements, Sutron notified customer contracting officers of the reduction, but not GSA. Sutron subsequently notified GSA after learning that GSA also wished to be notified.

Whether or not Sutron properly notified GSA of the price reduction is a matter of administration of the contract with GSA which does not affect the validity of the award to Sutron at the reduced price. See Synergetics International, Inc., supra.

The protest is denied.

for *Milton J. Aroslaw*
Comptroller General
of the United States

